

REGULATORY OBJECTIVES FOR NSR RULEMAKING

- A. Revise Alaska's construction permitting rules to meet the minimum requirements of the federal PSD and "Part D" (non-attainment area major NSR) programs.
- B. Require construction permits only for those projects listed in H.B. 160 (new major stationary source, major modification, new major HAP source and reconstruction of a major HAP source). H.B. 160, Section 14, provides for regulation of minor sources/modifications through the minor permit program, to be established through rulemaking.
- C. Incorporate EPA's PSD reform rules of 12/31/02 and August 2003, including the current actual to projected future actual emissions PSD applicability test, plant-wide applicability limits, clean unit exemption, pollution control project exemption and equipment replacement exemption.
- D. Include in construction permits only those terms and conditions necessary to authorize construction of the new source and/or modification of existing source. Construction permits should consist of BACT or LAER limits, any emission limits required to protect NAAQs or increments, and monitoring, reporting and recordkeeping to ensure compliance with those limits. Abandon the practice of including SIP limits and NSPS limits in construction permits. Those limits are adequately captured in operating permits.
- E. Meet the legislature's deadline of May 31, 2004 to complete the rulemaking.

PROPOSED CHANGES TO IMPLEMENT REGULATORY OBJECTIVES

1. **Repeal 18 AAC 50.300 (Construction Permit Classifications). Replace it with language that requires construction permits for projects listed in H.B. 160, section 13.** In Section 13 the legislature redefined the universe of projects that require a construction permit. The new rules should require construction permits only for those projects described in Section 13 (new major stationary source, major modification, new major HAP source and reconstruction of a major HAP source). Smaller modifications may be regulated through the minor permit program to be developed through rulemaking.
2. **Repeal 18 AAC 50.210 (definition of potential to emit). Amend 18 AAC 50.900 (Definitions) to include the EPA definitions found in 40 CFR 51.165 and 51.166, the definition of "air pollutant" in 42 U.S.C. 7602, and the definition of "hazardous air pollutant" in 42 U.S.C. 7412(b), all as amended through August 2003.** These definitions are the building blocks of the federal major new source review program. For most of these definitions H.B. 160 adopts by reference a definition from 40 CFR 51.165, 51.166 or the

federal Air Act. The EPA definitions in turn rely on other EPA definitions found in 51.165 and 51.166. The Alaska rules should adopt the full text of the cited CFR and Air Act definitions, so that a regulator or plant owner can find in 18 AAC 50 the key terms that dictate whether a project requires a construction permit.

3. **Repeal 18 AAC 50.305 (Construction Permit Provisions Requested By Owner/Operator). Amend 18 AAC 50.225 (Owner-Requested Limits) to enable a source to use that section to accept voluntary “synthetic minor” limits to avoid the requirement to obtain a construction permit.** 18 AAC 50.305 does not comply with H.B. 160. Section 13 of H.B. 160 authorizes issuance of a construction permit only to “major” projects. Section 50.305 authorizes use of construction permits to limit emissions so that a project does not become major. 18 AAC 50.225 or the new minor permit program can be used as the tool to impose synthetic minor limits to keep a project out of the construction permit program. Exception: a construction permit for a major new source or major modification should include any limits necessary to prevent the project from requiring a construction permit for pollutants other than those for which the project is “major.”
4. **Retain 18 AAC 50.310 (Construction Permits: Application) but amend it to track PSD, Part D and Section 112(i) application requirements found in 40 CFR 51.165, 51.166 and 63.5(d).** Existing 18 AAC 50.310 describes the contents of a construction permit application. Most of its requirements remain relevant, but the section needs to be revised to incorporate the relevant definitions, to include PSD application content requirements, and to apply only to “major” projects.
5. **Retain 18 AAC 50.315 (Construction Permits: Review and Issuance), but amend it to track the public notice requirements of 40 CFR 51.166(q). Rewrite subsection 50.315(e) (Requirements for Approval of Construction Permit) to track only the requirements of the “major” project permit programs listed above.** Construction permit approval criteria should mirror the approval requirements for PSD, Part D and Section 112(i) permits. The approval criteria do not include compliance with SIP or NSPS limits.
6. **Retain 18 AAC 50.320 (Construction Permits: Content and Duration). Repeal subsection (b) (DEC approval required to transfer ownership of source) as inconsistent with PSD definition of “major modification.”**
7. **Adopt a rule stating that when the Department determines a project may be subject to an NSPS or MACT standard the construction permit will contain the following condition: “Permittee shall comply with all applicable requirements of 40 CFR Part 60 [or 63], Subparts A and XX.” No other NSPS/MACT implementation language in construction permits.** Alaska is not delegated to administer NSPS. Construction permits today are cluttered with NSPS provisions. These provisions have created Title V drafting

problems. For instance, DEC will include an NSPS provision in a construction permit, then EPA waives compliance or grants an alternate monitoring method. The permittee has to follow the rule because the rule citation appears in a construction permit. NSPS requirements need not appear in a construction permit. The Title V permitting process is the correct vehicle to determine which NSPS and MACT conditions apply, and which monitoring is necessary to assure compliance.

- 8. Effective date: new rules apply to all projects for which final construction permits have not been issued by the effective date of EPA SIP approval of the new rules.**
Exception: permit applicant may elect to seek permit under old rules for application deemed complete prior to SIP approval date. Delayed effective date ensures that sources in Alaska need not comply with two construction permitting programs at the same time.
- 9. Grandfather provisions: all construction permits issued under old rules remain in effect, unless terminated for failure to timely commence construction.**
- 10. Applicability determinations: adopt a section stating that within 30 days of receipt of a written request the Department will issue a written determination of whether a specific project requires a construction permit.** Include in the new fee for service rules authority to assess a cost-based fee to issue applicability determinations.